

False / Misleading Advertising

Sec. 8A-108. Misleading advertisements prohibited.

(a) It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or any thing of any nature whatsoever, or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this County, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or by any other manner or means whatever, any assertion, representation or statement of fact, concerning such real or personal property or services, professional or otherwise, or concerning any circumstances or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(b) It shall be unlawful by means of exaggerated variations in the comparative size, location or position of letters, figures or other markings or characters on any price tag, sign, posters, notice, display or advertisement or other public representation of any nature whatsoever, to mislead or deceive, or to attempt to mislead or deceive the public, as to the true nature, price, quantity, quality, brand, or character of any goods, wares, merchandise, services, facilities, or accommodations, or as to the nature of, or the reason, if any is offered, for the sale or offering for sale, so being made to the public.

(c) Where the property or services so advertised are available for purchase by the general public, the word "wholesale" or any grouping of words designed to impart a similar meaning as the word "wholesale," shall not be used in the advertisement unless the following words are clearly and prominently displayed: "This offer is available to distributors or dealers only, not to the public."

(d) It shall be unlawful to advertise, or otherwise represent to the public in any manner whatsoever:

(1) A representation of brand, quality, quantity, trade name or other character of any property or services that is untrue or misleading.

(2) A sale or an offer for sale of any property or service which is contingent upon the concurrent purchase of any other property or service, unless clearly spelled out in the advertising.

(3) A rate advertised on the premises of any motel, hotel, apartment, rooming house, or any other room accommodations of any nature or kind whatever if such accommodations are not in fact available at the advertised rate at the time advertised. It is the specific intent of this subsection that such advertised accommodations not be fully occupied and unavailable for rent or lease at the time advertised.

(e) This article does not apply to any publisher of a newspaper, magazine or other publications, or the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to advertising, who publishes, broadcasts, or otherwise disseminates an advertisement in good faith without knowledge of its false, deceptive or misleading character. (Ord. No. 68-52, § 24, 9-19-68; Ord. No. 72-9, § 1, 2-15-72; Ord. No. 72-28, § 1.5, 5-30-72)

Sec. 8A-110. Complete price; representations; official terms.

It shall be unlawful to advertise, or otherwise represent to the public in any manner whatsoever:

(a) A price or price reference of a commodity, service or other thing of value unless such price presentation is the complete purchase price. The complete purchase price advertised must be the price most prominently emphasized.

(b) A representation in any manner of brand, quality, quantity, trade name, or other character of any property or service that is untrue or misleading.

(c) Terms such as "Public Notice," "Public Sale," "Ordered Sold," etc., unless there is an official act by a governmental agency concerning the subject of application for such terms.

(d) When an offer is made in an advertisement and there is a contingency, condition or limitation on the offer, such contingency, condition or limitation shall be conspicuously stated in a place contiguous to the complete purchase price quoted.

(Ord. No. 68-52, § 26, 9-19-68; Ord. No. 85-61, § 2, 9-3-85; Ord. No. 88-33, § 1, 5-3-88)

Sec. 8A-113. Deceptive trade practices.

A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupation, he:

- (a) Passes off goods or services as those of another;
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;
- (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (e) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (f) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used of secondhand;
- (g) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (h) Disparages the goods, services or business of another by false or misleading representation of fact;
- (i) Advertises goods or services with intent not to sell them as advertised;
- (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (k) Makes false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions.
- (l) Sells, causes to have sold, or promotes the sale of any residential or commercial habitable structure, located in the incorporated or unincorporated areas of Miami-Dade County, the permit for which was applied for after August 24, 1992 and prior to September 1, 1994, without including in the contract for such sale, or in a rider to such contract, and in all pamphlets, fliers, and marketing brochures used to promote the sale of such structures, the following disclosure in not less than ten-point bold-face type:

THIS RESIDENTIAL OR COMMERCIAL HABITABLE STRUCTURE WAS CONSTRUCTED PURSUANT TO A BUILDING PERMIT APPLIED FOR PRIOR TO SEPTEMBER 1, 1994. AS A

RESULT, THE CONSTRUCTION OF SUCH STRUCTURE WAS NOT REQUIRED TO MEET CERTAIN POST-HURRICANE ANDREW AMENDMENTS TO THE SOUTH FLORIDA BUILDING CODE. A SUMMARY OF THE SEPTEMBER 1, 1994 AMENDMENTS TO THE SOUTH FLORIDA BUILDING CODE MAY BE OBTAINED FROM THE Miami-Dade COUNTY BUILDING CODE COMPLIANCE OFFICE LOCATED AT 140 W. FLAGLER STREET, SUITE 1603 (PH. 375-2901).

Notwithstanding the foregoing, this subsection shall not apply to: (i) sales of used residential habitable structures owned by individuals where such owners are natural persons not affiliated with any business entity in connection with such sale, or (ii) sales of any residential or commercial habitable structure being constructed pursuant to approved building plans for which a statement of building code compliance has been issued and sealed by a professional engineer or architect stating that such building plans are in compliance with the Post-Andrew Building Code Amendments identified in the following sentence, provided such plans do in fact comply with the Post-Andrew Building Code Amendments. For purposes of this section, Post-Andrew Building Code Amendments shall refer to all building code amendments adopted by Miami-Dade County Ordinance No. 93-141 (impact tests), No. 94-65 (shutters), No. 94-79 (wind load), and No. 94-100 (roofing).

In order to prevail under this section, a complainant need not prove competition between the parties or actual confusion of misunderstanding.

Any person who engages in a deceptive trade practice as defined in this section shall be guilty of a misdemeanor and be punished as specified in Section 8A-116 of the Code of Miami-Dade County, Florida.

(Ord. No. 73-96, § 1, 11-20-73; Ord. No. 95-132, § 1, 7-25-95; Ord. No. 95-196, § 1, 11-7-95)

Note-- Ord. No. 95-196, adopted Nov. 7, 1995, amended § 8A-113(l) to read as herein set out. Section 4 of said ordinance enacted sunset provisions which provided as follows: This ordinance shall become effective ten (10) days after the date of enactment and shall sunset five years from the effective date hereof. Upon becoming effective, the exemption contained in Section 8A-113(l)(ii) hereof shall apply retroactively to August 4, 1995, provided, however, that to be eligible for such retroactive application of exemption (ii) a person or entity must meet all of the requirements enumerated in such exemption no later than November 17, 1995, and provided further that such exemption shall not apply retroactively whenever such application would impair or diminish substantial substantive rights, including, without limitation, contract rights or defenses.

Sec. 8A-113.1. Negative option marketing programs.

- (1) Negative option marketing programs restricted. It shall be unlawful for a person to engage in a negative option marketing program without a written contract with the consumer in which the consumer expressly agrees to participate in the negative option marketing program. No contract provisions binding a consumer to participate in a negative option marketing program shall be valid for a period longer than twenty-four (24) months from the date they were signed by the consumer.
- (2) Definition. "Negative option marketing program" as used in this section means a contract under which a seller either:
 - (a) Sends to a consumer an announcement, advertising or notice that:
 - (i) The supplier proposes to send goods or provide services to the consumer (other than periodic supplements to previously acquired merchandise), and
 - (ii) The consumer is required to pay for those goods or services unless the consumer affirmatively communicates that the consumer refuses to accept the goods or services; or

- (b) Sends to a consumer a notice accompanying goods or services unless the customer affirmatively communicates that the consumer refuses to accept the goods or services.
- (3) Contract provisions. Any negative option contract without the following provisions shall be unlawful.
 - (a) All negative option contracts. All negative option contracts must advise the consumer that the consumer's future silence in the face of an offer will constitute an acceptance of the offered goods or service. The contract must specify the terms of the negative option including the type of goods or service to be offered; the time period (of not less than ten (10) days) in which the goods or service can be declined; the methods by which the consumer can decline the goods or service; the right of a consumer to withdraw from the negative option at any time; and the method by which the consumer can withdraw from the negative option program.
 - (b) Avoiding adhesion contracts. If the contract contains any provision concerning matters other than the negative option, the negative option provisions of the contract will be invalid unless; (1) they contain all of the terms required in subsection (3)(a); (2) they are printed in type as large as the second largest type used on the contract and under no circumstances less than ten (10) point type; (3) they contain the following language in a separate, blocked section in immediate proximity to the signature line in the largest type used on the contract: "WARNING: IF YOU SIGN THIS CONTRACT, THE COMPANY WILL HAVE THE RIGHT, FOR THE NEXT 24 MONTHS, TO BILL YOU FOR GOODS OR SERVICES THAT YOU DO NOT SPECIFICALLY ORDER, IF YOU FAIL TO RESPOND TO THEIR NOTICES AND DECLINE THE GOODS OR SERVICES WITHIN THE PERIOD PRESCRIBED BY THIS CONTRACT."; (4) they are located together near the warning required in subsection (3)(b)(3); (5) they provide a place next to the negative option provisions on which the consumer can check and initial whether she accepts or rejects the negative option provisions; (6) they provide and state that there is no penalty for declining to participate in the negative option.
- (4) Unordered goods or services. Any goods or services delivered pursuant to a negative option marketing program that is not in compliance with this section shall be deemed unordered goods or services which the consumer may use or dispose of without any cost or obligation.
- (5) Scope of regulation. This section will not apply to any type of negative option marketing program which is subject to federal or State regulations or laws when such regulations or laws have the effect of preempting local ordinances. This section shall apply to consumer goods and services that are purchased for personal, home, or residential use.
- (6) Legal effect. This section shall not be construed to authorize contracts otherwise illegal or to create any contractual obligation or duty on the part of a consumer that does not exist under the common law of contracts of the State of Florida.

(Ord. No. 91-68, § 2, 7-9-91)

Sec. 8A-116. General penalty for violation of article.

Unless otherwise specifically provided herein, any persons violating any of the provisions of this article shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days or by both such fine and imprisonment in the discretion of the court of appropriate jurisdiction.

(Ord. No. 68-52, § 43, 9-19-68)